



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,051	07/25/2003	Michael D. Zieles	8222-52	3793

7590 09/09/2004

Woodard, Emhardt, Moriarty, McNett & Henry LLP
Bank One Center/Tower
Suite 3700
111 Monument Circle
Indianapolis, IN 46204-5137

EXAMINER

LORENCE, RICHARD M

ART UNIT

PAPER NUMBER

3681

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/627,051	ZIELES ET AL.
	Examiner	Art Unit
	Richard M. Lorence	3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 July 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-26 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 25 July 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/15/03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____ .

DETAILED ACTION

This is the first Office action on the merits of Application No. 10/627,051 filed on July 25, 2003. Claims 1-26 are currently pending.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the reference numerals 230, 234, 236, 238, 242, 244, 246, 248 and 252 mentioned on page 18 of the description.

The drawings are further objected to because in Figure 8 “232” should be -- 230 --; and in Figure 11 the box labeled “S1” in logic subgrouping 700 should be labeled -- S2 --.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement

Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it includes the legal jargon "means" in lines 3 and 5-7. Correction is required. See MPEP § 608.01(b).

The disclosure is further objected to because of the following informalities:

In line 4 on page 8 "50" should read - -70- -. In line 9 on page 11 "valve" should read - -value- -. In line 18 on page 22 "311" (second occurrence) should read - -310- -. In each of lines 16 and 21 on page 25 "S1 LM" should read - - S2 LM- -. In line 21 on page 25 "S1" should read - -S2- -. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamei '092 which discloses an apparatus and method for controlling the amount of fuel provided to a motor vehicle engine when a malfunction is detected in the accelerator pedal position sensing means (column 1, lines 5-12). Note particularly the engine 3, throttle signal γ , operator adjusted throttle control 1, accelerator pedal position sensing means 20-22, engine speed sensor 4, brake status sensor 31 and vehicle speed sensor 8.

Claims 1-26 are further rejected under 35 U.S.C. 102(b) as being anticipated by Macheda et al. '092 which discloses an apparatus and method for controlling the amount of fuel provided to a motor vehicle engine when a malfunction is detected in the accelerator pedal position sensing means (column 1, lines 8-14). Note particularly the engine 4, the throttle signal supplied to actuator 11 by the controller 19, accelerator pedal position sensing means 1A, 1B, engine speed sensor 2 and brake status sensor 18.

Prior Art Citation

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of the prior art references listed on the form PTO-1449 submitted with the Information Disclosure Statement filed on September 15, 2003 has been considered. The examiner further cites Holbrook et al. '844, Bruedigam et al. '859, Ishida '214 and Machida et al. '331 which show throttle controllers arranged to operate in the event of failure of a sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard M. Lorence whose telephone number is (703) 308-3062. The examiner can normally be reached on Mondays through Fridays from 9:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (703) 308-0830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard M. Lorence
Primary Examiner
Art Unit 3681

Lorence/rml